

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

FEDERAL COMMUNICATIONS
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b)

Table of Allotments,

FM Broadcast Stations

(Safford, Arizona)

(Eagar, Arizona)

MB Docket No. 02-263

RM-10498

RM-10606

To: Chief, Allocations Branch
Stop Code 1800D5

COMMENTS
OF 3 POINT MEDIA - ARIZONA, L.L.C.

3 Point Media - Arizona, L.L.C. ("3 Point"), by its attorneys, respectfully submit these comments in response to the Commission's *Public Notice*' regarding the counterproposal filed by Eagar Broadcasting (the "Eagar Counterproposal") in the above-captioned proceeding.² By these comments, 3 Point, the proposed successor-in-interest to Arizona Radio Partners, LLC ("Arizona Radio Partners"),³ respectfully urges the Commission to dismiss the Eagar

¹ Consumer and Governmental Affairs Bureau, Reference Information Center, Petition for Rule Making Filed, *Public Notice*, Report No. 2583 (rel. Nov. 20, 2002) ("*Public Notice*"). The *Public Notice* permits interested persons to file comments regarding Eagar Broadcasting's counterproposal within fifteen days after the date of the *Public Notice*. Accordingly, 3 Point's comments are timely filed.

² Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Safford, Arizona), *Notice of Proposed Rule Making*, DA 02-2101, MB Docket No. 02-263, RM-10498 (rel. Aug. 30, 2002).

³ On December 2, 2002, Arizona Radio Partners, LLC and 3 Point filed an application requesting the FCC's consent to the assignment of the license for KVNA(FM), Flagstaff, Arizona, from Arizona Radio Partners, LLC to 3 Point (see FCC File No. BALH-20021202ACL). Accordingly, as the proposed assignee of KVNA(FM), 3 Point is the proposed successor-in-interest to Arizona Radio Partners, LLC.

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Counterproposal as deficient because it conflicts with Arizona Radio Partners' pending, earlier-filed counterproposal submitted in a separate proceeding, MB Docket 02-73.⁴

* * *

On May 20, 2002, in response to a *Notice of Proposed Rule Making* issued in MB Docket 02-73 for Cameron, Arizona (the "Cameron Proceeding"): Arizona Radio Partners timely filed a counterproposal proposing a set of allotments that included a proposal to allot Channel 247C to First Mesa, Arizona and to reallocate KVNA(FM) from Flagstaff to Dewey-Humboldt, Arizona.⁵

On October 21, 2002, in response to the *Notice of Proposed Rule Making* issued in this proceeding, MB Docket 02-263, and five months after the May 20, 2002, comment deadline in the Cameron Proceeding, Eagar Broadcasting filed a counterproposal proposing to allot Channel 246C to Eagar, Arizona. As demonstrated in the attached Technical Statement, the proposed Channel 246C allotment to Eagar is short-spaced to the Channel 247C allotment to First Mesa proposed in Arizona Radio Partners' pending counterproposal.

Given that the Eagar Counterproposal is mutually exclusive with the pending Channel 247C allotment to First Mesa and was filed after the comment deadline in the Cameron Proceeding, the Eagar Counterproposal must be dismissed. Under the Commission's rules, after the close of the comment period in an FM allotment rulemaking proceeding, counterproposals

⁴ Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cameron, Arizona), *Notice of Proposed Rule Making*, DA 02-73, MB Docket No. 02-73, RM-10400 (rel. March 29, 2002).

⁵ *Id.*

⁶ On June 4, 2002, Arizona Radio Partners and NPR Phoenix, LLC filed joint reply comments proposing a global resolution, which continues to propose the allotment of Channel 247C to First Mesa, Arizona.

enjoy cut-off protection and are protected from any subsequently-filed, conflicting proposals? The Commission has explained that “the continuous filing of proposals without regard to a cut-off date is not conducive to the efficient transaction of Commission business and would delay service to the public.”⁷ Accordingly, the Commission will dismiss any proposals that are filed after the cut-off date and conflict with a pending counterproposal filed in a separate proceeding.⁸

In this case, Arizona Radio Partners’ Counterproposal was afforded cut-off protection and protected from subsequently-filed, conflicting proposals after the May 20,2002, comment deadline in the Cameron Proceeding. The Eagar Counterproposal was filed after May 20,2002, conflicts with Arizona Radio Partners’ Counterproposal, and ~~thus~~ is deficient and untimely.

⁷ See *Pinewood, South Carolina, Memorandum Opinion and Order*, 5 FCC Rcd 7609, ¶¶ 11-12 (1990) (“*Pinewood*”); see also *Benjamin. Texas, Report and Order*, 17 FCC Rcd 10994, ¶ 3 (rel. June 14, 2002) (“*Benjamin*”) (“The Notice in [the prior rulemaking] elicited counterproposals which, in turn, could cause the subsequent exclusion of the Benjamin proposal or any other proposal in conflict with a timely counterproposal.”).

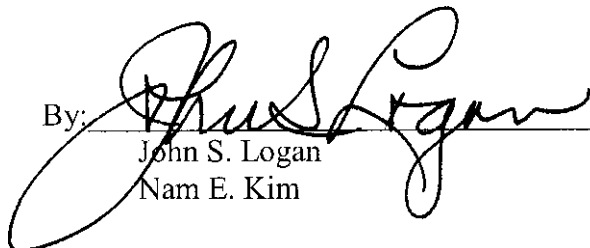
⁸ *Pinewood* at ¶ 12.

⁹ See *id.*; see also *Benjamin* at ¶ 2.

In light of the foregoing, 3 Point respectfully urges the Commission to dismiss the Eagar Counterproposal forthwith

Respectfully submitted,

3 POINT MEDIA - ARIZONA, L.L.C.

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December 5, 2002

ATTACHMENT
TECHNICAL STATEMENT

TECHNICAL STATEMENT
ALLOCATION IMPACT BETWEEN
COUNTERPROPOSAL IN **MB** DOCKET 02-73
AND COUNTERPROPOSAL IN **ME** DOCKET 02-263

Technical Statement

This Technical Statement has been prepared to address the mutually exclusive impact between the proposed Channel 241C at First Mesa, Arizona and Channel 246C at Eagar, Arizona.¹

The Channel 247C at First Mesa, Arizona is proposed at the following reference site:

35° 41' 09" North Latitude
110° 21' 43" West Longitude

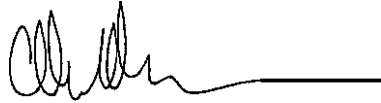
The Channel 246C at Eagar, Arizona is proposed at the following reference site:

34° 01' 39" North Latitude
108° 49' 27" West Longitude

The actual separation distance between the aforementioned proposed allotments is 232 kilometers. The minimum Section 13.207 separation distance between first-

¹ Channel 247C at First Mesa, Arizona was proposed as the counterproposal in MB Docket Number 02-73, submitted May 20, 2002, and in the Joint Reply filed June 4, 2002 proposing a global resolution. Channel 246C was proposed as the counterproposal in **MB Docket** Number 02-263, submitted October 21, 2002.

adjacent channel Class C stations is 241 kilometers. This is a short-spacing of 9 kilometers. Hence, the proposed First Mesa and Eagar, Arizona allotments can be considered as mutually exclusive.

A handwritten signature in black ink, appearing to read 'Charles A. Cooper', followed by a horizontal line.

Charles A. Cooper

December 5, 2002

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CERTIFICATE OF SERVICE

I, Roberta L. Rosser, a secretary at Dow, Lohnes & Albertson, PLLC, hereby certify that a true and correct copy of the foregoing "Comments of 3 Point Media-Arizona, L.L.C." was sent on this 5th day of December, 2002, via first-class United States mail, postage pre-paid, to the following:

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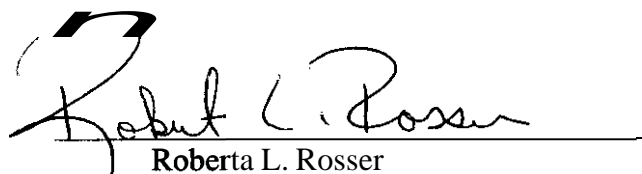
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